Office Supreme Court, U.S.
FILED
DEC 13 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 172.

ERIC G. KAUFMAN and AENNI C. KAUFMAN,
Petitioners,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., etc.,

J. HOWARD MCGRATH, Attorney General of the United States, as successor to the Alien Property Custodian, GEORGIA NEESE CLARK, Treasurer of the United States, and REMINGTON RAND, INC.,
Respondents.

BRIEF FOR THE PETITIONERS.

WILLIAM RADNER,
IRVING MOSKOVITZ,
HENRY G. FISCHER,
SEYMOUR GRAUBARD,
ODELL KOMINERS,
Attorneys for Petitioners.

PETER N. SCHILLER,
BERYL HAROLD LEVY,
Of Counsel.

INDEX.

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	4
Statement	5
Specification of Errors	11
Summary of Argument	12
Argument	15
Introduction	15
I—The Government must return the vested assets of the plaintiff corporation to the extent of the non-enemy interest therein	17
A. The Act and the *Uebersee* Case	17
B. Developments Subsequent to *Uebersee*	20
1. Judicial Developments	21
2. Executive and Legislative Developments	26
3. Policy and Constitutional Considerations	36
II—The right to partial return is in the corporation	39
III—The right to partial return in this case can be asserted only by intervention	48
Conclusion	51
Appendix A	53

CITATIONS:

PAGE

Cases:

Backus v. *Finkelstein*, 23 F. 2d 357 (D. Minn. 1927), app. dismissed, 31 F. 2d 1011 (C. C. A. 8, 1929) 42

Behn, Meyer & Co. v. *Miller*, 266 U. S. 457 (1925) 17

Branch Banking & Trust Co. v. *United States*, 98 F. Supp. 757 (Ct. Cl. 1951) 45

Brown v. *DeYoung*, 167 Ill. 549, 47 N. E. 863 (1897) 42

Chicago, Burlington & Quincy R. R. v. *Chicago*, 166 U. S. 226 (1897) 37

Clark v. *Uebersee Finanz-Korporation*, 332 U. S. 480 (1947),
2, 3, 3n, 4, 5, 13, 17, 18, 19, 20, 21, 22, 24, 26, 43, 44

Hamburg-American Line Terminal & Navigation Co. v. *United States*, 277 U. S. 138 (1928) 17

McGrath v. *Zander*, 85 U. S. App. D. C. 334, 177 F. (2d) 649 (1949) 36, 36n

Matthews v. *Headley Chocolate Co.*, 130 Md. 523, 100 Atl. 645 (1917) 42

Missouri-Kansas Pipe Line Co. v. *United States*, 312 U. S. 502 (1941) 16, 21, 48, 50

Nagano v. *McGrath*, No. 169, U. S. Supreme Court, October Term, 1951 25

Park & Tilford, Inc. v. *Schulte*, 160 F. 2d 984 (C. C. A. 2, 1947), *cert. denied* 332 U. S. 761 (1947) 49

Pepper v. *Litton*, 308 U. S. 295 (1939) 42, 45, 46

Pyle-National Co. v. *Amos*, 172 F. 2d 425 (C. A. 7, 1949) 49

PAGE

Russian Volunteer Fleet v. *United States*, 282 U. S. 481 (1931) 25, 38

Securities & Exchange Commission v. *Chenery Corp.*, 332 U. S. 194 (1947), rehearing denied 332 U. S. 783 (1947) 42

Silesian American Corporation v. *Clark*, 332 U. S. 469 (1947) 24, 24n, 25

Southern Pacific Co. v. *Bogert*, 250 U. S. 483 (1919) 42, 45

Standard Oil Co. v. *Clark*, 163 F. 2d 917 (C. C. A. 2, 1947), cert. denied 333 U. S. 873 (1948), 18, 21, 22, 23, 24, 25

Taylor v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939) 42, 45

Uebersee Finanz-Korporation v. *Clark*, 82 F. Supp. 602 (1949) 40n

Uebersee Finanz-Korporation v. *McGrath*, No. 178, U. S. Supreme Court, October Term, 1951. 41, 42

Zittman v. *McGrath*, 341 U. S. 446 (1951) 24n

Constitution, Statutes and Executive Agreements:

Act of September 28, 1950, Public Law 857, 81st Congress, 2d Session 29

Agreement Relating to the Resolution of Conflicting Claims to German External Assets, 18 State Dept. Bull., pp. 4 *et seq.* (1948); H. R. Rep. No. 2770, 81st Congress, 2d Session, pp. 17 *et seq.*; effective February 1, 1951, 24 State Dept. Bull., p. 293 (1951). 26, 27, 27n, 28, 29, 34, 35, 38

Trading With the Enemy Act, 50 U. S. C. App. §1, *et seq.*:
Section 2 ..... 17, 20, 53, 54, 55
Section 5(b) 13, 17, 18, 19, 20, 22, 55, 56, 57

PAGE

Trading With the Enemy Act, 50 U. S. C. App. §1, *et seq.* (continued):
Section 6 57
Section 7(c) 57, 58, 59
Section 9(a) 2, 3, 5, 7, 11, 17, 20, 22, 23, 35, 36, 36n, 37, 39, 43, 44, 59, 60
Section 32 ..... 6n
Section 32(a) 36n
Section 33 ..... 11, 44
Section 39 ..... 1n

28 U. S. C. Section 1254 2

United States Constitution, Fifth Amendment, 12, 13, 26, 37

War Claims Act, 50 U. S. C. App. § 2001ff. 37, 47

Washington Accord of 1946, 14 State Dept. Bull., p. 1121 ..... 35n

Miscellaneous:

Annual Report, Office of Alien Property Custodian, for fiscal year ending June 1945, Chapter 4 ..... 25n

Executive Order 8785, Section 5E (iii) 22, 22n, 60

Executive Order 9095, Section 10 ..... 60, 61

Executive Order 9193, Section 10(a) 22n

F. R. C. P. 24(a) 11, 12, 48, 49, 50

Hearings before Subcommittee on Settlement of Intercustodial Conflicts Involving Enemy Property, Committee on Foreign Affairs, House of Representatives, on H. J. Res. 475, 81st Congress, 2d Session, July 12, 1950 28

PAGE

H. Doc. No. 628, 81st Congress, 2nd Session, reprinted in S. Rep. No. 2051, 81st Congress, 2nd Session 30, 31

H. J. Res. 516, 81st Congress, 2d Session 29

H. Rep. No. 2770, 81st Congress, 2nd Session . . 27n, 29

H. R. 133, 82d Congress, 1st Session 33n

H. R. 2263, 82d Congress, 1st Session 33n

H. R. 4284, 82d Congress, 1st Session 33n

H. R. 8422, 81st Congress, 2nd Session . . . 30, 65, 66, 67

H. R. 8998, 81st Congress, 2d Session 32, 33

Hyde, *Protection by the United States of American-Owned Property in War Stricken Areas*, 46 Columbia Law Review 519, 521-2 (1946) . . 38

Mason, Conflicting Claims to German External Assets, 38 Georgetown Law Journal 171 (1950), 27, 28

Maurer, *Non-Enemy Interests in Enemy External Assets*, 16 Law & Contemp. Prob. 407, 422-30 (1951) 25, 37

4 Moore's Federal Practice (2d Ed.) §24.07 16

S. 2339, 82d Congress, 1st Session 33, 33n, 34

S. 3901, 81st Congress, 2nd Session . 31, 32, 33, 61, 62, 63

S. Rep. No. 2051, 81st Congress, 2nd Session, 31, 63, 64, 65

S. Rep. No. 2508, 81st Congress, 2nd Session 30

Shareholder Intervention in Corporate Litigation, 63 Harvard Law Review 1426, 1429 (1950) . . . 49

14 State Dept. Bulletin, p. 1121 (1946) 35n

PAGE

18 State Dept. Bulletin, p. 4 *et seq.* (1948) . . 27, 27n, 29

20 State Dept. Bulletin, p. 819 (1949) 35n

24 State Dept. Bulletin, p. 293 (1951) 27n

Statement of Harold F. Reis, Acting Chief, Legal Branch, Office of Alien Property, Department of Justice, before the Special Subcommittee on War Claims of the House Committee on Interstate and Foreign Commerce, 81st Congress, 2nd Session, concerning H. R. 8998 and S. 3901, 32, 33

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 172.

ERIC G. KAUFMAN and AENNI C. KAUFMAN,
Petitioners,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., etc.,

J. HOWARD MCGRATH, Attorney General of the United States, as successor to the Alien Property Custodian, GEORGIA NEESE CLARK, Treasurer of the United States, and REMINGTON RAND, INC.,
Respondents.

BRIEF FOR THE PETITIONERS.

Eric G. Kaufman and Aenni C. Kaufman, your petitioners, are non-enemy stockholders[1] of Societe Internationale pour Participations Industrielles et Commerciales S. A., a Swiss corporation.[2] On their own

[1] The term "non-enemy" is used herein for the sake of brevity to mean not an enemy, enemy national, an ally of an enemy, a national of an ally of enemies, a national of a designated enemy country, or a national of Germany or Japan, within the meaning of the Trading With the Enemy Act, as amended. Thus the term "non-enemy" excludes any person who might be deemed a national of Germany or Japan within Sec. 39 of the Act.

[2] Hereinafter variously referred to as "I. G. Chemie", "the corporation", or "plaintiff".

behalf and on behalf of all other non-enemy stockholders of the corporation similarly situated, they present for review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled action on April 5, 1951, affirming the order of the District Court which denied petitioners' amended motion for leave to intervene in the action brought by the above corporation against the Government under Section 9(a) of the Trading With the Enemy Act.[3]

Opinions Below.

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 79) is reported at 188 F. 2d 1017 (April 5, 1951). The oral opinion of the District Court (R. 74) is unreported.

Jurisdiction.

The judgment of the Court of Appeals for the District of Columbia was entered on April 5, 1951 (R. 81). The petition for a writ of certiorari was filed on July 3, 1951, and was granted on October 15, 1951. The jurisdiction of this Court rests on 28 U. S. C. Section 1254.

Questions Presented.

The fundamental questions posed by this Court in *Clark* v. *Uebersee Finanz-Korporation,* 332 U. S. 480, 489, 490 (1947), as awaiting "legislative or judicial clarification" are here presented for review.

---

[3] The Trading With the Enemy Act, 50 U. S. C. App. §1 *et seq.*, for convenience, is frequently hereinafter referred to as the "Act".

A Swiss corporation, whose American assets have been vested by the Alien Property Custodian,[4] has some enemy shareholders. It is charged by the Government with being owned or controlled through its management stockholders by I. G. Farben, a German corporation. The total shareholdings of non-enemies in the Swiss corporation, having no connection with the management or with I. G. Farben, amount to over one-third of the outstanding voting stock and represent more than one-half of the ownership equity in the Swiss corporation.

In these circumstances "what part of a friendly alien corporation's property may be retained"[5] by the Government?

That basic issue has been stated in the petition for review, in three separate but related questions, as follows:

> Do American and other non-enemy stockholders of a Swiss corporation have a right to intervene as a class[6] in an action brought by that corporation under Section 9(a) of the Trading With the Enemy Act to recover property vested by the Alien Property Custodian—

---

[4] Included in the vested assets is some 93% of the stock of General Aniline & Film Corporation, plus some millions of cash on deposit. It has been admitted by the Government that the vested assets may have a value in excess of one hundred million dollars (R. 16).

[5] *Clark* v. *Uebersee Finanz-Korporation*, 332 U. S. 480, 490 (1947). More extensive quotations and analysis of the *Uebersee* case are set forth at pp. 17 *et seq.*, *infra*.

[6] Non-enemy shareholders of the corporation owning over 11,000 ordinary or common shares out of a total of approximately 140,000 outstanding have filed an affidavit supporting petitioners in this proceeding (R. 69).

(1) where the management of the corporation, because of financial self-interest, violates its fiduciary obligation to the corporation and its stockholders by deliberately refusing to assert a claim, even in the alternative, for the return of the proportionate non-enemy interest in the vested property, although such claim has been specifically reserved by this Court in the *Uebersee* case for future decision, and the corporate management by its refusal may cause substantial loss to such American and other non-enemy stockholders?

(2) where the management of the corporation and the Alien Property Custodian have affirmatively stated their intention to settle the corporate suit, and have not denied petitioners' allegations that such settlement (a) will be made for an amount far less than the vested assets proportionate to the non-enemy interests in the corporation and thus inadequate, and (b) will accrue to all stockholders alike, thus ultimately benefiting enemy stockholders at the expense of non-enemy stockholders, contrary to the purpose and provisions of the Trading With the Enemy Act?

(3) where the vested property is presently a fund subject to the control of the court, and disposition of the property will adversely affect the American and other non-enemy stockholders unless their interests are adequately represented in the proceedings?

Statutes Involved.

The relevant portions of the Trading With the Enemy Act, as amended, are set forth in Appendix A, *infra*, pages 53-60.

Statement.

The plaintiff, formerly and generally known as "I. G. Chemie", now known as "Interhandel", is a Swiss holding corporation. Between 1942 and 1946 all of its American assets, valued in excess of $100,000,000, and consisting of substantially all of the outstanding stock of its American subsidiary, General Aniline & Film Corporation, and certain cash balances, augmented by declaration of dividends, were vested by the United States on the ground that these assets were beneficially owned or controlled by I. G. Farbenindustrie, a German corporation and an enemy of the United States (R. 48).

On October 21, 1948, I. G. Chemie brought this principal proceeding in the United States District Court for the District of Columbia for the return of all of the vested property under Section 9(a) of the Trading With the Enemy Act. Its complaint is similar to that sustained by this Court in the *Uebersee* case in 1947 and alleges in substance that it is a corporation organized in and existing under the laws of Switzerland, a friendly neutral country, and that it was and is non-enemy (R. 1-15).

The Government in its answer to the complaint asserts in substance that I. G. Chemie was enemy and enemy tainted because a conspiracy allegedly existed among I. G. Farben, I. G. Chemie, and I. G. Chemie's officers and controlling management stockholders. The object of the alleged conspiracy was to "conceal, camouflage and cloak the ownership, control and dominion by I. G. Farben of properties" in many countries of the world including these particular prop-

erties in the United States; and that by virtue of the concealed, camouflaged and cloaked control, ownership and domination by I. G. Farben, the plaintiff corporation is not entitled to the return of any part of the vested property (R. 28-30).[7] Apart from the stock held by the management stockholders, as of 1940, approximately 11% of the total authorized stock of the corporation was owned by German nationals (R. 51).

The Government has asserted that the management, the so-called "Sturzenegger Group", has complete control over the affairs of the corporation,[8] without regard to the wishes or interest of the non-enemy stockholders who, as we have alleged, own over one-third of the outstanding voting stock which represents a majority investment in the corporation.[9] It is unquestioned that the petitioners and other non-enemy shareholders similarly situated have no connection

---

[7] No other basis for retention of the vested property has been alleged.

[8] The Government has stated on the record: "Sturzenegger is the leader of a group of corporations known as the Sturzenegger Complex and they own much and they own a predominating share in the plaintiff." "He dominates the plaintiff" (R. 55). This assumption is apparently based on a stock ownership by the Sturzenegger Group of 136,000 shares out of a total authorized and issued capital as of 1940 of 350,000 shares. Of the stock said to be owned by this Group, 100,000 shares represent preferred stock with full voting rights, for which only 20% of par value, or 2 million Swiss francs, equivalent to $460,000, was paid in as of 1940.

[9] In addition to the clearly non-enemy interest, a substantial, but as yet undetermined, number of shareholders designated as German individuals in 1940, were not in fact German or enemy as of December 7, 1941, or were specifically exempted from the category of enemy by Section 32 of the Act because of racial, religious or political persecution. As a matter of fact, the Kaufmans, petitioner-intervenors, who are now American citizens and residents, are precisely in that category of shareholders.

with the management group or with anyone else who might be a party to any such conspiracy.

Faced with the Government's contention that no return of any kind can be made because of the alleged concealed I. G. Farben ownership and control exercised through the "Sturzenegger Group", the corporation has refused to make any claim, even in the alternative, for partial return of the vested property, notwithstanding the very substantial interest of the non-enemy shareholders. The Government has not disputed this non-enemy interest. The corporation, *i. e.*, the Sturzenegger management, has preferred to risk all (a total of over 100 million dollars) or nothing on its ability to prove complete freedom from enemy taint. The self-interest of plaintiff's management impels it to avoid any issue as to its "enemy taint". Notwithstanding its fiduciary obligation to the corporation as a whole and to its non-enemy stockholders, that self-interest has thus far prevented any claim in this action of—what has been termed—the "Uebersee issue".

Indeed, after this 9(a) action had been pending for over one year but before issue was finally joined, both I. G. Chemie and the Government explicitly stated for the record that they were about to effect a settlement which would dispose completely of the corporation's title and claim to the vested property. The proposed settlement is imminent and is for an amount which—as petitioners have alleged and respondents have nowhere for the past year and one-half contradicted—is very substantially less than

the value of the proportionate interest of the non-enemy shareholders in the vested property (R. 57-58).

Moreover, such settlement, which would be distributed to enemies and non-enemies alike, would cause further dilution of the non-enemy interest in a manner contrary to the purposes of the Act. For example, if in settlement $20,000,000 were paid to the corporation and the Government thereby received undisputed title to $100,000,000 of vested assets, and if non-enemy shareholders numbered 60%, they would benefit to the extent of 60% of $20,000,000 or $12,000,000, instead of 60% of $100,000,000, or $60,000,000. Furthermore, the Sturzenegger Group, as well as the acknowledged enemies would benefit by the settlement to the extent of $8,000,000. Such a settlement, which the Government is about to conclude in this fashion, is being arranged solely with the very persons and interests claimed by the Government to be cloaking for the enemy. Only petitioners' intervention stands in the way of this settlement.

Petitioners, for themselves and on behalf of all other non-enemy shareholders similarly situated (American, Swiss and other neutral and allied nationals), have moved to intervene in the suit brought by I. G. Chemie in the United States District Court for the District of Columbia in order to present these matters for adjudication, over the opposition of the management. While petitioners own only eighty-six shares of stock valued at $15,000 (over $60,000 if petitioners are successful herein), their motion for intervention and the proposed amended complaint in intervention is supported by an affidavit of a protective committee formed in Switzerland of non-

enemy shareholders owning over 11,000 shares of the ordinary stock of I. G. Chemie[10] (R. 69-71).

The proposed amended complaint in intervention alleges in substance that the corporation is and has been non-enemy at least to the extent that it is and has been owned by non-enemies; that a claim exists for the return of the vested property proportionate to the non-enemy ownership of I. G. Chemie; that the management of the corporation refuses to make such a claim, for, being themselves charged with enemy taint, their personal and financial self-interest is in conflict with their fiduciary duty to make such a claim in behalf of the corporation; and that accordingly your petitioners are entitled as of right to intervene for that purpose because your petitioners and all other non-enemy stockholders similarly situated are or may be bound by the judgment in the action (R. 47-57).

The proposed complaint alleges, as an additional and alternative claim to the foregoing, that the non-enemy stockholders as a class have an interest in the vested property which has been placed under the control of the Court; that these stockholders would be adversely affected by disposition of the property and are without adequate protection unless they are allowed to intervene as of right (R. 66-67).

Finally, the proposed complaint alleges (and it is nowhere contradicted), that I. G. Chemie and the Government are about to settle the principal action

[10] These 11,000 shares had a market value as of the date of filing of approximately $1,800,000. The stock of I. G. Chemie is regularly quoted on the Zurich Stock Exchange in Switzerland and the current quotation is substantially in excess of this amount.

for an amount far below the value of the proportionate non-enemy interest in the vested property; that the proposed settlement does not take into account such interest and any claim based thereon; that the settlement would be made with the corporation and thus would be for the ultimate benefit of persons ineligible for the return of vested property under the Act; that the benefits thus accruing to ineligible persons would be at the expense of the non-enemy stockholders; that such a settlement is contrary to the purposes of the Act; that the I. G. Chemie management seeks such settlement for its own purposes rather than for the welfare of its stockholders; and that your petitioners and other non-enemy stockholders similarly situated are entitled as a matter of right to intervene to protect their interests (R. 57-66).

The prayer of petitioners' complaint requests, in effect, the return of a portion of the vested property commensurate with the non-enemy ownership of I. G. Chemie and, in any case, that any such proceeds, whether attained by judgment or settlement, be turned over to the corporation, subject to order of the court so as effectively to prevent the benefits thereof from reaching persons ineligible under the Trading With the Enemy Act, at least until after all other interests in the corporation shall have been made whole (R. 67).

In short, the motion for leave to intervene, together with the supporting papers, premises: either that the corporation is the appropriate claimant to insure partial return of the vested assets proportionate to the non-enemy interest in the corporation, and if the corporation refuses to make such a claim, then the non-

enemy shareholders must do so on its behalf; or that the non-enemy shareholders as a class must intervene in the corporate action in order to protect their interest in the property before the court, for the outcome of the principal action (whether by judgment or settlement), would dispose of the property under the control of the court, and might be binding upon the stockholders and would adversely affect their interest.

Since the law appeared to petitioners to be unsettled and there was a possibility that the statute of limitations might be deemed to apply to petitioners as individuals, petitioners, concurrently with the filing of the motion for intervention, also brought a holding action in the District Court for the Southern District of New York under Section 9(a) of the Act (R. 83-86), in order to toll any possible running of the statute of limitations (Sec. 33, Trading With the Enemy Act, 50 U. S. C. App. §33).

Specification of Errors.

The Court of Appeals for the District of Columbia erred:

1. In affirming the judgment of the District Court denying petitioners' amended motion for leave to intervene.

2. In failing to hold that petitioners are entitled to intervene as of right under Rule 24(a)(2) F. R. C. P., in view of the fact that the plaintiff corporation has refused to assert the claim that the Government may not retain all of the vested assets of the corporation where substantial non-enemy interests are involved, and that the representa-

tion of the claim as thus far asserted on behalf of the plaintiff corporation is or may be inadequate and petitioners are or may be bound by a judgment in this action.

3. In failing to hold that petitioners are entitled to intervene as of right under Rule 24(a)(3) F. R. C. P., in view of the fact that petitioners and other shareholders of the plaintiff corporation similarly situated have an interest in the fund under the disposition and control of the court which has been or may be confiscated, unless petitioners are permitted to intervene and establish such interest so as to limit the Government's claim for retention to the enemy interests involved.

4. In failing to hold that petitioners and other non-enemy stockholders are entitled to intervene as of right to prevent an imminent settlement of the litigation which would frustrate the purposes of the Trading With the Enemy Act,

5. In holding that petitioners are not entitled to intervene as a matter of right, notwithstanding that its judgment denies to petitioners and to other shareholders similarly situated their right to just compensation and to due process under the Fifth Amendment.

Summary of Argument.

A Swiss corporation with some enemy ownership is charged by the Government with being owned or controlled by an enemy through its management stockholders. The basic issue is: what part of the vested assets of a neutral corporation may be retained where only a fractional enemy ownership exists.

I.

The Government must return the vested assets of the plaintiff corporation to the extent of the non-enemy interest therein.

Prior to the amendment of Section 5(b) of the Trading with the Enemy Act in 1941, a Swiss corporation could obtain the return of all its vested property irrespective of any enemy ownership. The purpose and effect of the amendment of Section 5(b) was to enable the United States Government to reach and retain enemy interests which masqueraded behind such a neutral corporation, but not to appropriate friendly or neutral assets. As a result of the amendment, such a corporation must be regarded as non-enemy to the extent of its non-enemy interest, but may be treated as enemy to the extent of the enemy interest therein which the Government is now enabled to reach.

Subsequent to the *Uebersee* case, the courts, as well as the Custodian, have recognized this right and have permitted confiscation of assets only to the extent of the enemy interest. Where a domestic corporation is involved, the Custodian has vested only the enemy stock interest, even though it may constitute an overwhelming majority. Where a foreign corporation is involved, administrative necessity may require the vesting of the American assets, as distinguished from the stock of the corporation, in order to reach the enemy interest therein; but there is no greater justification under the Act and under the Fifth Amendment for retaining all of the American

assets of that corporation, than there is for retaining all of the assets of a domestic corporation having a substantial enemy interest.

The right of a partial return of vested assets of a neutral corporation to the extent of the non-enemy interest has been recognized in executive as well as legislative actions and in the foreign policy of the United States, but has been inexplicably denied in this case. Every policy and constitutional consideration favors recognition of the right of return.

II.

The right to partial return is in the corporation.

Because of personal self-interest, this corporate management refuses to assert the claim. Neither the corporation nor the Government can give any reason of substance or of policy, to deny that the right is in the corporation. On the contrary, the Government's own administrative rulings and its practice in settling other cases involving neutral corporations, have recognized that the proper claimant is the corporation.

In any case, non-enemy stockholders have a right to be heard in the proposed settlement in order to raise these considerations and to prevent distribution of the proceeds in a manner contrary to the purpose of the Act. A court of equity has adequate power to deal properly with matters of this kind.

III.

The right to partial return can be asserted only by intervention.

The management cannot and will not properly discharge its obligations to the corporation and its non-enemy stockholders consistent with the Act. Intervention is necessary since the representation of the interest of the non-enemy shareholders has been demonstrated to be inadequate, indeed, non-existent; the non-enemy shareholders may be bound by judgment in the action or by settlement; and they have an interest in the assets before the court.

ARGUMENT.

Introduction.

The essential question is whether upon the facts alleged in the proposed complaint in intervention there is an enforcible right to return of the vested property to the extent of the separable non-enemy ownership of I. G. Chemie. There is no issue presented to this Court as to whether any assets of I. G. Chemie, wherever located, were employed in economic warfare against the United States or its allies. Nor is any question presented by any of the pleadings in this case now before the Court, whether I. G. Chemie did business within enemy territory. Here we are concerned solely with the effect of partial enemy ownership of a neutral corporation upon the right of the corporation to the return of its vested property.

We submit that there is an enforcible right to return of the vested property to the extent of the separable non-enemy ownership and that that right is properly in the neutral corporation. Since the corporate plaintiff has refused to assert the right, the non-enemy shareholders must be permitted to intervene for that purpose. In any case, it is necessary in the present circumstances that intervention be granted, if only to guard against an imminent, improvident and illegal settlement.

In the courts below we pointed out that the court need not determine whether petitioners' claims, as set forth in the proposed complaint in intervention, would be ultimately successful. It was enough, we urged, to decide whether petitioners for themselves and for others similarly situated had the "standing to make the claim before the district court". *Missouri-Kansas Pipe Line Co.* v. *U. S.*, 312 U. S. 502, 508 (1941).

In the courts below a decision as to the merits of the proposed complaint in intervention would not have been decisive. Although the technical requirements of intervention no more demand a final judgment of this Court than of the lower court as to the merits of petitioners' claims, the situation here, we submit, is different. We suggest that this Court can, and should, consider petitioners' motion for leave to intervene as raising the issue of the sufficiency of the proposed complaint in intervention, and thus provide guidance for all future proceedings in this litigation. *Cf.* 4 Moore's Federal Practice (2d Ed.), §24.07.

I.

The Government Must Return the Vested Assets of the Plaintiff Corporation to the Extent of the Non-Enemy Interest Therein.

A. The Act and the *Uebersee* Case.

The legislative history of the Trading With the Enemy Act and of the amendment to Section 5(b) of the Act in 1941 was fully briefed and considered in *Clark* v. *Uebersee Finanz-Korporation,* 332 U. S. 480 (1947).

As was made clear in the *Uebersee* case, prior to the last war any neutral corporation not doing business in enemy territory, such as I. G. Chemie, could have recovered all its vested property on the basis of its naked legal "title" because it was not specifically defined as "enemy" in Section 2. Judicial return under Section 9(a) was available to *any* person not an enemy "claiming any interest, right, or title" in vested property. That the beneficial "right" or "interest" belonged to stockholders who were specified as enemies in Section 2, and whose interest the Custodian had tried in vain to reach and retain, did not prevent return. *Behn, Meyer & Co.* v. *Miller,* 266 U. S. 457 (1925); *Hamburg-American Line T. & N. Co.* v. *U. S.,* 277 U. S. 138 (1928).

The effect of the amendment of Section 5(b) was to overcome the limitations of the *Behn* and *Hamburg* cases. At the same time the *Uebersee* case also made clear that the vesting powers granted by

Section 5(b) for the purpose of reaching enemy interests were not coterminous with the right to retain. This Court rejected the Government's argument that it had power to retain all the foreign property vested. Nor did the Court accept the Government's suggestion that a remedy in the Court of Claims be created to save the constitutionality of a statute construed in so drastic and novel a fashion. *Cf. Standard Oil Co.* v. *Clark*, 163 F. 2d 917 (C. C. A. 2, 1947), *infra*, pp. 21-23. Rather, as this Court stated in the *Uebersee* case, the intent of the Congress and the effect of the amendment to Section 5(b) were to enable the Government "to reach enemy interests which masqueraded behind those innocent fronts"—"not to appropriate friendly or neutral assets". 332 U. S. at p. 485.

In rejecting the contention of the Government, this Court said:

> "* * * It is hard for us to assume that Congress adopted that drastic course in the case of friendly or neutral foreign interests whose investments in our economy were in no way infected with enemy ownership or control. Our hesitation is, moreover, increased when we note that §7(c) makes the remedy under the Act the only one Congress has granted a claimant. It is not easy for us to assume that Congress treated all non-enemy nations, including our recent allies, in such a harsh manner, leaving them only with such remedy as they might have under the Fifth Amendment." 332 U. S., at pp. 487-488.

Inasmuch as the complaint in the *Uebersee* case alleged that the corporation was not owned in whole

or in part by an enemy, the Court found it unnecessary to decide what mode of relief should be accorded either the Government or the claimant in a case where the enemy had a partial interest:

> "It is suggested, however, that this approach may produce results which are both absurd and uncertain. It is said that the entire property of a corporation would be jeopardized merely because a negligible stock interest, perhaps a single share, was directly or indirectly owned or controlled by an enemy or ally of an enemy. It is also pointed out that securities or interests other than stock might be held by an enemy or ally of an enemy and used effectively in economic warfare against this country. But what these interests are, the extent of holdings necessary to constitute an enemy taint, what part of a friendly alien corporation's property may be retained where only a fractional enemy ownership appears, are left undecided. Since we assume from the allegations of the complaint that respondent is free of enemy taint and therefore is not within the definition of enemy or ally of an enemy, those problems are not now before us. We recognize their importance; but they must await legislative or judicial clarification." 332 U. S., at pp. 488-489.

"What part of a friendly alien corporation's assets may be retained where only a fractional enemy ownership appears" is the basic issue here. We submit that the amendment to Section 5(b) did not create any new or greater rights to retain any interests other than enemy. It did not in any way limit the right of return of friendly neutral interests in property which had

been vested in order to reach enemy interests in that property.

This view accords with the suggestion in the *Uebersee* case that Section 2 may now be construed to be "merely illustrative, not exclusionary" (332 U. S. at pp. 488-9). For purposes of Section 2, and therefore of Section 9(a), a neutral corporation may be treated as enemy to the extent of that enemy interest which a court determines that the Custodian is entitled to reach. Correlatively, a neutral corporation must still be treated as non-enemy for the purposes of Section 2 to the extent of the non-enemy interest. In short, a neutral corporation may sue under Section 9(a), but its recovery may be limited to the extent of the non-enemy interests.

The Government cannot have it both ways—it cannot assert that Section 5(b) of the Act enables it to penetrate the neutral corporation in order to reach and retain enemy interests behind it, and at the same time assert its impenetrability, in order to deny return of the substantial separable non-enemy interests.

B. Developments Subsequent to *Uebersee*.

In our view, the right to partial return is but the logical development of the *Uebersee* case and of established Constitutional prescriptions and standards of statutory construction. The judicial, legislative and executive developments that have followed the decision in the *Uebersee* case, and the policy and constitutional considerations inherent therein, all abundantly support the position we here urge upon the Court.

1. Judicial Developments.

Judicial consideration of this problem has been meager. Since the *Uebersee* case is again to be argued to this Court, we deem it unnecessary to comment on the developments in that case. The opinion of the Court of Appeals for the District of Columbia Circuit in the instant case indicates that the Court misconceived the basis for intervention. Suffice it to say that the *Uebersee* case and *Missouri-Kansas Pipe Line Co.* v. *U. S.*, 312 U. S. 502 (1941), among others, were completely ignored by the Court of Appeals and were not even cited. This is the first case in which this Court has decided to review the question of the treatment to be accorded to separable non-enemy interests in vested property of a neutral corporation having enemy stockholders.

While the *Uebersee* case was under consideration by this Court in 1947, the United States Court of Appeals for the Second Circuit in *Standard Oil Co.* v. *Clark*, 163 F. 2d 917 (1947), did in fact sustain the principle of requiring the return of the non-enemy interests in vested property and of permitting retention of vested property to the extent of the enemy interest. Both plaintiff and defendant asked this Court to review that Court's judgment; and subsequent to the *Uebersee* opinion both requests were denied. 333 U. S. 873 (1948).

In that case, by agreements in 1939, I. G. Farbenindustrie conveyed to the Standard Oil Company of New Jersey its interests in a variety of assets in the United States which, up to that time, both companies had owned in intermingled fashion. These interests

included certain stock in subsidiary or affiliated companies, in addition to equitable interests in patents and contract rights. As a result of these purported conveyances, Standard Oil became the sole owner of legal title of all these assets which were subsequently vested by the Alien Property Custodian on the ground that Standard Oil was fronting for I. G. Farben and had not acquired any beneficial interest under the 1939 agreements. Executive Order No. 8785, Sec. 5E (iii), for some purposes of the Act defined a foreign national to include an American corporation "to the extent" that it "is or has been * * * acting or purporting to act directly or indirectly for the benefit of or on behalf of any national * * *" of a foreign country. 3 CFR, Cum. Supp. 1943; 6 F. R. 2897.[11] The Government contended that Standard Oil Company was a foreign national for the purposes of the Act; and that because it was a foreign national it was barred by Section 5(b) from bringing suit under Section 9(a). The theme of this argument was essentially the same as that which the Government unsuccessfully had urged upon this Court in the *Uebersee* case. Judge Clark noted with respect to this argument (163 F. 2d at p. 925, fn. 1):

> "Though defendant [the Government] does not make the argument, it would seem possible to contend that, under this extensive definition, plaintiffs became enemy nationals after the outbreak of war, since their concealment of I. G. assets continued thereafter. Such an argument

[11] Executive Order No. 8785 related to Foreign Funds Control (Appendix A, p. 60). The definition above quoted was subsequently incorporated in Executive Order No. 9193, Sec. 10(a), which relates to vesting by the Custodian. 3 CFR, Cum. Supp. 1943; 7 F. R. 5205.

would not require restricting the scope of § 9(a)." (Material in brackets supplied.)

The Court of Appeals rejected the contention of the Government, as applied both to the term "foreign national", and *a fortiori* to the term "enemy". It pointed out that, even under the "to the extent" definition of "foreign national", the Standard Oil Company was not barred from suit. It could still recover that portion of its vested assets which it had owned beneficially notwithstanding that the Custodian was entitled to retain the remainder which the Court found to be "substantially" or "equitably" that of I. G. Farben. The Court pointed out that the Congress in 1946 had refused the Custodian's request for legislation cutting off the right of a friendly foreign national to sue for return of his vested property under §9(a); it thereafter stated (p. 926):

"* * * The power of seizure and confiscation, particularly as against a friendly alien, is so drastic and so novel that we think it should not be extended beyond bounds clearly set. * * *

"But even if the defendant's general position be accepted, we think the second step of the argument presents difficulty in application beyond the general terms of the decree below. This premise would afford an added ground, a further buttress, for the refusal to return the property found below to be substantially and equitably that of I. G. But we do not see how it assists the defendant beyond this. Under the Executive definition of a foreign national, so far as here pertinent, it includes other persons only 'to the extent' that they acted directly or indirectly for the benefit or on behalf of a foreign national. Where plain-

tiffs were acting for themselves, as the District Court found with respect to the purchases before 1939, we find nothing in these provisions to bar the plaintiff from suit. Accordingly we conclude that application of the asserted principle would not change the final outcome of this action."

Silesian American Corporation v. *Clark*, 332 U. S. 469 (1947), which was cited by the Court of Appeals below, was decided at the same time as the *Uebersee* case. There, the Alien Property Custodian had vested certain shares on the books of Silesian American Corporation as belonging to an enemy. The corporation had refused to issue and deliver new certificates of stock to the Custodian. No assets of the corporation itself were vested. This Court held that the corporation was required to issue such new certificates, that the Custodian was entitled to their possession, and that it was not the obligation of the corporation to defend the right of the shareholders to be shareholders of the corporation.

Whether the shareholders, whose shares had been vested, or the Custodian would eventually establish rightful ownership of the stock in question was not in issue.[12] It was, thus, a controversy with which the corporation had no reason to concern itself. In the instant case, the plaintiff corporation is most directly concerned because its assets, not shares of its stock held by enemies, have been vested.

[12] The Government aptly described the significance to it of the *Silesian American Corporation* case in its brief to this Court in *Zittman* v. *McGrath*, 341 U. S. 446 (1951), as follows (p. 14, fn.):

"Where he vests a described *res*, the Custodian is clearly entitled to immediate possession."

It should especially be noted that in the *Silesian-American* case the Custodian's right to vest a substantial part of the stock allegedly owned by enemies did not induce him to attempt to vest all of the corporation's assets or its stock. We have been unable to find a single case of a domestic corporation substantially enemy owned or controlled where the Custodian sought even to vest the assets of any such corporation, or any separable non-enemy stock interest therein.[13] Accordingly, it may be fairly presumed that if I. G. Chemie, the plaintiff in this action, were a domestic corporation, the Custodian, regardless of the extent of enemy interest, would not have vested anything more than the enemy owned shares in the corporation. *Cf. Standard Oil Co., supra*; *Nagano* v. *McGrath* (October Term 1951, No. 169); Maurer, *Non-Enemy Interests in Enemy External Assets*, 16 Law & Contemp. Prob. 407, 422-30 (1951). The treatment sought to be accorded by the Government to non-enemy shareholders owning part of friendly alien corporations, as contrasted with the treatment given similar interests in domestic corporations, constitutes discrimination, which raises a serious constitutional question. *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481 (1931).

It is recognized that, as a matter of administrative convenience and necessity, the Government may be

---

[13] See Chapter 4, Annual Report, Office of Alien Property Custodian, for fiscal year ending June 1945. The Custodian vested *e. g.*, 535,000 shares, or 77%, of the outstanding stock of American Bosch Corporation; 479,726 shares, or approximately 91%, of the outstanding stock of American Potash Co.; 44,000 common shares and 2,225 preferred shares, or 100% and 41% respectively, of the outstanding common and preferred shares of Schering Corporation; 530,145 shares, or approximately 54%, of the outstanding shares of Hugo Stinnes Corporation; 382,700 shares, or approximately 61%, of the outstanding stock of Harvard Brewing Co.

obliged to vest the assets in the United States of a neutral corporation in order to reach the enemy interests therein, whereas, with respect to a domestic corporation, it is necessary to vest only the enemy owned stock. But administrative convenience and necessity for purposes of vesting do not afford a basis for the confiscation of that part of the vested assets which, in the case of a domestic corporation, the Custodian would not even have vested.

For the purposes of the Act, it will not be disputed that a Swiss corporation is no more an enemy than a domestic corporation and is equally entitled to the protection of the Fifth Amendment. We submit that the Custodian cannot justify his efforts to retain all of the assets of a Swiss corporation where, under the same circumstances, he would not do so in dealing with a domestic corporation. The right to retain the assets of a non-enemy corporation, whether the corporation be domestic or friendly alien, is limited to the extent of the enemy interests.

2. Executive and Legislative Developments.

The approach of the executive departments of the Government toward the basic issue in this case, during the period subsequent to the *Uebersee* decision, may be described as schizophrenic. They have consistently recognized the existence of the right which we urge, and at the same time they have exerted all their efforts to oppose the enforcement of the right, particularly as it applies to I. G. Chemie.

In 1947 the Government executed an international agreement, commonly called the "IARA" Agree-

ment,[14] which in effect adopts the very principle forming the basis of our claim. In this agreement, the Government has insisted that American interests receive the very treatment which we urge, with respect to assets vested by our allies, even though it now seeks to deny such treatment to American interests with respect to assets vested by the United States.

The article prefacing the text of the agreement expressed as one of its purposes:

> "The agreement, furthermore, will carry out the established policy of the Department of State of protecting the interests of United States nationals in assets outside Germany owned either by a corporation in which there is a German interest or by a corporation organized under the laws of Germany." 18 State Dept. Bull., p. 4 (1948).

Mr. Malcolm Mason, who participated in the negotiation of the agreement as Chief of the Legal Branch of the Office of Alien Property, wrote with respect to its purposes:

> "* * * There is precedent in the field of international private claims for refusing to look through the corporate entity. This view, however, is entirely out of keeping with the spirit and purpose of Trading With the Enemy Act

[14] This agreement, entitled "The Agreement Relating to the Resolution of Conflicting Claims to German External Assets", was negotiated in Brussels by our State Department and the Office of Alien Property and was signed on behalf of the United States on December 5, 1947, subject to necessary Congressional approval, 18 State Dept. Bull., pp. 6 *et seq.*; H. R. Rep. No. 2770, 81st Cong., 2d Sess., pp. 17 *et seq.* This agreement became effective February 1, 1951. 24 State Dept. Bull., p. 293 (1951).

legislation and of the Paris Agreement. It is essential, for these purposes, that indirect enemy interests be recognized. On the other hand, to treat the interest in the American corporation as wholly German enemy because it is indirectly German enemy-controlled does injury to the 20% non-enemy interest in the Netherlands corporation." 38 Georgetown Law Journal 171, 179-180 (January 1950).

In testifying concerning the agreement as late as July 12, 1950, Mr. Mason stated:

> "In any such agreement * * * we would eliminate German interests as thoroughly as possible. At the same time, we would protect, on a reciprocal basis, the right of Americans and non-enemies. Both of these have to be there." Hearings before the Subcommittee on Settlement of Intercustodial Conflicts Involving Enemy Property, Committee on Foreign Affairs, House of Representatives, on H. J. Res. 475, 81st Cong., 2d Sess., p. 15, July 12, 1950.

The language in the agreement, by which such a purpose is intended to be achieved, appears in Part III, Article 17, of the Annex. With interpolations as it would apply to this case, it reads:

> "It is contemplated that the proportion of the value of the property in the secondary country [U. S. A.] which corresponds to the percentage of the direct and indirect non-enemy interests in the primary company [I. G. Chemie] shall inure to the benefit of such non-enemy interests. In arrangements for release and reimbursement made under this Part between two or more

> Parties, the Parties shall make reasonable provision to avoid injury to interests in the primary company of non-enemies who are nationals of a third Party [Switzerland, Great Britain, France, etc.]" 18 State Dept. Bull., p. 10; H. R. Rep. No. 2770, op. cit. *supra*, p. 27, fn. 14 at p. 22. (Material in brackets supplied.).

In September 1950 the Congress passed H. J. Res. 516, which authorized the President to execute agreements, such as IARA, and in doing so specifically directed that:

> "(2) Such agreements shall be in accordance with the policy of protecting and making available for utilization the American and non-enemy interests in such property and further the elimination of enemy interests in such property and the efficient administration and liquidation of enemy property in the United States." Act of September 28, 1950, Public Law 857, 81st Cong., 2d Sess.

The House Report accompanying the legislation explained the need for the legislation in the following terms:

> "*It is believed that many of the provisions of the Brussels agreement and other contemplated agreements could be put into effect under existing law.* These agreements, however, involve a novel approach, designed to expedite administration and liquidation of enemy property by centralizing their administration in one country." H. Rep. No. 2770, op. cit. *supra*, p. 27, fn. 14 at p. 10. (Emphasis supplied.)

The Senate Report put it in these words:

> "These agreements will make it possible to substitute orderly administrative procedures and regulations as a means for settling intercustodial disputes for the more complicated, protracted, expensive and vexatious litigation that dominated this type of settlement after World War I." S. Rep. No. 2508, 81st Cong., 2d Sess., p. 1.

Both explanations make clear that it was not the purpose of the legislation to confer new rights upon or restrict existing rights available to non-enemies, but rather to provide an administrative means more expeditious, less complicated and less vexatious than litigation for the vindication of existing rights, backed by the full force of the legislative and foreign policy of the United States.

The President formally approved the right of return. While our motion for intervention was pending, the Congress passed a private bill (H. R. 8422, 81st Cong. 2d Sess.; see Appendix A, pp. 65-67), providing for return of thirty percent of the vested assets of a Honduran corporation. Thirty per c[redacted] of the stock was owned by a non-enemy minority stockholder. The President vetoed that bill, but in the course of his veto message of June 23, 1950 made it clear that in his judgment equity and justice require legislative action to provide administrative relief for non-enemy stockholders of neutral corporations, by general rather than by private legislation, in the following terms:

> "It is recognized that injustices may result from the statutory prohibition against return of property to persons who, even though they qualify

as individuals, are ineligible because their ownership of the vested property was through the medium of a corporation. This provision of law has required the Office of Alien Property to deny the return of property in other cases just as deserving as the one here in question. The special consideration this bill would grant to this particular claimant would be unfair to the other claimants in equally appealing circumstances.

"The problem presented by this case and other similar cases should be considered in connection with general legislation amending the Trading With the Enemy Act to permit returns of property to persons who would be eligible claimants if they had owned the property directly rather than through a corporate equity." H. Doc. No. 628, 81st Cong., 2d Sess., reprinted in S. Rep. No. 2051, 81st Cong., 2d Sess., p. 2. (See Appendix A, pp. 64-65.)

Following the suggestion of the President, legislation of general application was thereafter introduced and passed in the Senate on July 26, 1950 (S. 3901, 81st Cong. 2d Sess.). This bill (which, together with the Senate report thereon, S. Rep. No. 2051, appears in Appendix A, pp. 61-64), authorized administrative return of vested property upon the same principle which is the basis of your petitioners' claim for judicial relief in this case. Notwithstanding the President's message, the Department of Justice opposed the bill in hearings before the subcommittee of the House Committee on Interstate and Foreign Commerce, and it died with the end of the session.

The Department of Justice, while publicly opposing the bill, nevertheless announced in a prepared state-

ment delivered by Mr. Reis, then Acting Chief of the Legal Branch of the Office of Alien Property:

> "The veto message clearly expresses the President's desire to give relief to certain categories of stockholders. However, from the viewpoint of legislation the matter is extremely complicated and great care must be exercised in order to insure relief to the groups actually intended to be benefited and to avoid including among those benefited persons who we all agree are not entitled to relief. The legislation should also be drafted so as to avoid the creation of difficulties and confusion in administration. H. R. 8998 and S. 3901 are subject to such substantial objections in these respects that the Department must oppose their enactment, although *it is in favor of the general objectives of the President's veto message.*
>
> * * * * *
>
> "I wish to reiterate the statement that the Department of Justice is in favor of taking appropriate action to protect certain classes of non-enemy minority stockholders where it is reasonably possible to do so." Hearings before Subcommittee of the Committee on Interstate and Foreign Commerce House of Representatives, 81st Cong., 2d Sess. on S. 3901, H. R. 8998, *etc.*, 401, at pp. 405, 409. (Emphasis supplied.)

The following reason given by the Department of Justice for its opposition to this bill is precisely one of the grounds which makes petitioners' intervention imperative:

> "Sixth, a special problem also is created by

S. 3901. In a number of cases, neutral corporations claimed ownership of important assets vested in the Attorney General. Rather than submitting to years of long-drawn-out litigation respecting some cases, they were settled for payment of cash to the claimant corporations. These settlements made it possible for the Department to make available to the war claims fund the amounts which will be, or have been, received from the sales of the stock immediately, rather than to await the disposition of very lengthy litigation. The important thing to notice here is that the claimant in each case was a neutral corporation, which settled the litigation and waived any claim to the vested property. *Under ordinary principles of corporation law, such settlements are, of course, binding on the stockholders who have no independent claim and the settlements assumed the applicability of this principle.*" Hearings, *etc.*, op. cit., *supra*, at p. 408. (Emphasis supplied.)

Several bills similar to S. 3901 have been introduced in the present Congress, both in the House and in the Senate and are pending in Committee.[15] The bill most recently introduced, S. 2339, was presented by Senator Magnuson on October 20, 1951. It provides

[15] H. R. 133, 82d Cong., 1st Sess., introduced by Mr. Keogh, and referred to the Committee on Interstate and Foreign Commerce January 3, 1951; H. R. 2263, 82d Cong., 1st Sess., introduced by Mr. McGuire and referred to the Committee on Interstate and Foreign Commerce January 31, 1951; H. R. 4284, 82d Cong., 1st Sess., introduced by Mr. Keogh and referred to the Committee on Interstate and Foreign Commerce May 28, 1951; S. 2339, 82d Cong., 1st Sess., introduced by Mr. Magnuson on October 20, 1951 and referred to the Committee on the Judiciary.

among other things that no claim for return may be made based upon an interest in a corporation

> "which has entered into a settlement of its claim for return of the property claimed, under the terms of which it has waived its interest in such property; * * *."

Presumably this provision was intended to meet the objection of the Government expressed through Mr. Reis with respect to the right of return where the corporation, having made the claim, has settled with the Government and has relinquished all rights in the vested property.

The principle we seek to establish in this case has been recognized, adopted and accepted by the executive and the legislative branches of our Government, but inexplicably has been denied to this case. The United States' delegation in executing the IARA agreement did so with a specific reservation that its provisions did not apply to the assets vested in the United States belonging to I. G. Chemie. In other words, the administrative machinery set up for the vindication of the rights of non-enemy stockholders in neutral corporations having enemy ownership is expressly denied to the non-enemy stockholders of I. G. Chemie, whether American, neutral, allied or persecutees.

Apart from the IARA agreement, the Government has failed to provide any administrative power of return of the American interest in assets of a neutral corporation vested by it. Yet our Government has successfully persuaded our Allies to provide in IARA for return of American stockholder interests in

neutral corporate assets vested by them, and has agreed to provide for the return of Allied stockholder interests in neutral corporate assets vested by it.[16]

The American (and neutral) stockholders in this situation are therefore left to the "vexatious litigation" under Section 9(a). To deny such judicial relief would produce this absurd result: an American stockholder in a neutral corporation, the assets of which were vested in both Canada and the United States, would be entitled to the proportionate return of the assets vested in Canada under IARA; but the same American stockholder would not be entitled to any return of the assets of the same corporation vested in the United States, even though a Canadian stockholder would be so entitled.

It is clear, therefore, that the various forms of administrative relief recently established by legislation and treaty were not intended by the Congress to be coterminous with the right to judicial return

---

[16] *Cf.* Executive Agreement, commonly known as "Washington Accord of 1946" executed on May 25, 1946, between the British, French and American governments on the one part, and the Swiss government on the other. As provided in Article IV, B of the Annex thereto:

> "Appropriate measures will be taken to liquidate the interests in Switzerland which German nationals, resident in Germany, have through such organizations [enemy corporations] and equally to safeguard substantial interests of non-German persons which would otherwise be liquidated." 14 State Dept. Bull., p. 1121 (1946). (Material in brackets supplied.)

The zeal with which the Government has sought to protect non-enemy interests in property in Switzerland of enemy corporations is to be contrasted with its efforts to obstruct application of the same principle to assets of neutral corporations vested in the United States.

Implementation of the Washington Accord is still under discussion. See 20 State Dept. Bull., p. 819 (1949).

afforded by Section 9(a). *McGrath* v. *Zander*, 177 F. 2d 649 (C. A. D. C. 1949).[17]

3. Policy and Constitutional Considerations.

We have thus far been unable to find any official expression by our Government, either in the course of this case or elsewhere, as to what purposes or policies of the Act would be served by the confiscation of upwards of $50,000,000 in assets which represent the non-enemy interests. It is not difficult to understand the reasons why the Government should vest the stock of General Aniline & Film Corporation during the war upon the suspicion of substantial German ownership of its neutral parent. No other reason appears in its Answer in this case. It is understandable that the Government must confiscate, to the extent of enemy interests in vested assets, in order to

[17] The Court of Appeals for the District of Columbia Circuit there described the relationship of Sections 32(a) and 9(a) as follows (at p. 652):

> "True it is that mere presence within enemy territory of an enemy national during hostilities is usually a prohibitive factor against the *discretionary* power of return granted the President or his delegate by Section 32(a). However, a court is required to return under Section 9(a) if the claimant be not an 'enemy or ally of enemy'; . . . The two sections 9(a) and 32(a) are independent and exclusive of each other. The latter, we think, was added to serve the limited purpose of affording speedy administrative relief (when found by the Executive in the interest of the United States) to certain classes technically banned under Section 9(a), such as nationals of countries overrun by the enemy who remained loyal to the Allied Cause. Although, with certain exceptions, citizenship and presence within the territory of an enemy country bar relief under the discretionary Executive authority granted by Section 32(a), they, of themselves, do not bar recovery under Section 9(a). (Citing cases.) The provisions of that section, as concern the courts' jurisdiction, remain unaffected by Section 32(a)."

use such property as reparations as required by Congress under the War Claims Act (50 U. S. C. App. §2001ff). But no intent of Congress would be effected, and no purpose of the Act would be served by the confiscation of the non-enemy interest in vested assets. Official pronouncements have affirmed that view (*supra*, pp. 27-32).

Even in this case the Government has not suggested any policy to be served by a denial of a partial return. It merely claims it has no administrative machinery to make a partial return of vested property in accordance with the Act, and it refuses to recognize that the courts are able to provide relief under Section 9(a). In essence, the arguments of the Government are directed to procedure, not substance. See Maurer, op. cit. *supra*, p. 25, at p. 423.

It would be a serious matter if in fact the Act had by express provisions prevented procedurally the fulfillment of any of its substantive aims. If it had, constitutional questions would have been brought into issue here, for it is clear that friendly aliens are entitled to the protection of the Fifth Amendment, (see discussion pp. 25-6, *supra*); and it is equally clear that under the Fifth Amendment this Court has consistently disregarded form to reach substance. *Chicago, Burlington & Quincy R. R.* v. *Chicago*, 166 U. S. 226, 235 (1897). There is, however, no provision in the Act to which the Government can point which expressly prevents the partial return of vested assets of neutral corporations when recovery is sought by suit or otherwise. It is the argument of the Government that these procedural handicaps must be read into the Act. It is inconceivable that the Court will read into the Act procedural hurdles to its

admitted purposes—hurdles which would also raise substantial constitutional questions. *Russian Volunteer Fleet* v. *U. S.*, 282 U. S. 481 (1931).

The return of the vested assets to the extent of the non-enemy ownership in I. G. Chemie is also essential to vindicate the announced foreign policy of the United States. As the State Department in its comment upon the IARA Agreement made clear, one of the purposes of that agreement was to further the established policy of protecting the interests of United States nationals abroad, and analogous to our case, in the form of American investments in foreign corporations. If that established foreign policy was not of significant importance prior to the war, it has since the war assumed a position of utmost significance. The ECA and Mutual Security programs are intended to encourage private American investment abroad. How can such investment be encouraged when it may become the subject of ultimate confiscation, because by accident the investors may find themselves to be stockholders in common with prospective enemies in a future war—and worse, even though the investment be made in a non-belligerent country? Yet such would be the consequences of the position urged by the Government in this case. Hyde, *Protection by the United States of American-Owned Property in War Stricken Areas*, 46 Col. L. Rev. 519, 521-2 (1946).

Thus it appears to us that, if the Government is right that no present procedures exist for the partial return of the vested assets of neutral corporations in proportion to their non-enemy ownership, then it would be necessary to devise some. Whether the Government is correct in its position that no *admin-*

istrative procedures exist is not in issue in this case. However, in so far as the Government takes the position that a *court of equity* does not have the powers to bring about results which the Act requires, it is clearly wrong. Section 9(a) of the Act, which could not have been more broadly written to avoid any such procedural difficulties, together with the general equity powers of the Federal Court, serve to bring about the return of corporate vested property to the extent of the non-enemy interest in a fashion that will fully satisfy all the purposes of the Act. In subsequent portions of this brief, we suggest several established methods which a court of equity may utilize in this case to accomplish this result.

II.

The Right to Partial Return Is in the Corporation.

If, as we believe we have shown, there exists a right of partial return of vested property of a neutral corporation to the extent of its non-enemy ownership, we pass to the question of who should properly assert the right. In our view, it is the corporation.

Had the management of I. G. Chemie been acting in good faith, it would have asserted a claim for the partial return of its vested assets as an alternative to its claim for full return. But, because the corporate management apparently prefers to sacrifice the interests of the non-enemy stockholders rather than to submit to the possibility of close scrutiny of its holdings, it has refused to raise this issue and strenuously opposes our intervention.

Had the corporation presented this matter in its pleading, we doubt that any issue of proper claimant would have been raised. The non-enemy shareholders would thereby have been protected and the court could superintend such return to effectuate the purposes of the Act. The corporation's refusal to make the claim and its opposition to the assertion of the claim on its behalf by non-enemy shareholders require satisfactory explanation beyond mere objections based upon procedural difficulties.[18]

Until petitioners raised the issue of partial return in the District Court, it clearly was the view of the Government that the corporate entity was the proper claimant to assert the return of the vested assets. When petitioners filed an administrative application asking for their proportionate interest in the vested corporate assets, the Office of Alien Property rejected the application on the specific ground that the corporate entity was the only proper claimant. When your petitioners filed their action in the United States District Court for the Southern District of New York for the purpose of preserving their position against the possibility of the running of the statute of limitations, in view of the unsettled state of the law, the principal ground interposed by the Government in support of its motion to dismiss the complaint was that the proper claimant for the return of vested assets was the corporation. The Government has settled directly with neutral corporations a number of cases involving the matters here at issue, and did so on the acknowledged premise

---

[18] Judge Laws, in *Uebersee Finanz-Korporation* v. *Clark*, 82 F. Supp. 602, 607 (D. C. 1949), pointed out several reasons why it is necessary to make such a claim in the pleading, *e. g.*, that such a claim might necessitate a different order and type of proof.

that the corporation was the proper claimant and that a settlement with the corporation bound all the stockholders of a corporation (see *supra*, p. 33).

In the present action, however, both the Government and the corporation have taken the position that, whatever right exists to a partial return of the vested property, that right can be exercised only by separate individual proceedings brought by each of the thousands of non-enemy stockholders. If respondents be right, then there would be required the filing of a multitude of individual suits, whose continuance might be made meaningless, if the court having jurisdiction of the property should adjudge either that the corporation obtain return of all the property or of none, or if a corporate settlement has been consummated. The facts require that the issues be presented now to the same court and in the same proceeding as that brought by the corporation, since that court has primary control over the vested property. We believe it clear that for proper judicial administration the rights we seek to have established require adjudication in the principal action, and that the corporation is the proper claimant.

So far as we have been able to determine, the only argument thus far advanced by the Government for its present position, that the proper claimant is not the corporation, is suggested in its brief in opposition to petition for certiorari in the pending case, *Uebersee Finanz-Korporation* v. *McGrath* (October Term, 1951, No. 178). There it said (at p. 27):

> "And to allow an enemy tainted corporation to secure even a partial recovery would plainly defeat the purposes of the act, for then the prop-

erty recovered would enure, in part, to the benefit of the enemy interests in the corporation."

The argument of the Government, however, erroneously assumes that a court of equity, decreeing a partial return of corporate assets, is powerless to prevent or limit the participation of enemy stockholders and corporate executives, wrongdoers in law or equity, in a corporate recovery. Equity courts, bankruptcy courts, and even administrative agencies, have had no substantial difficulty in dealing with similar problems in the past and in finding fair and equitable solutions for them. *Southern Pacific Co.* v. *Bogert,* 250 U. S. 483 (1919); *Taylor* v. *Standard Gas & Electric Co.,* 306 U. S. 307 (1939); *Pepper* v. *Litton,* 308 U. S. 295 (1939); *Securities & Exchange Commission* v. *Chenery Corp.,* 332 U. S. 194 (1947); *Backus* v. *Finkelstein,* 23 F. 2d 357 (D. Minn. 1927), app. dismissed, 31 F. 2d 1011 (C. C. A. 8, 1929); *Matthews* v. *Headley Chocolate Co.,* 130 Md. 523, 100 Atl. 645 (1917); *Brown* v. *DeYoung,* 167 Ill. 549, 47 N. E. 863 (1897).

The decree of a court might simply provide that the Government return to the corporate entity that portion of the vested assets proportionate to the ownership in I. G. Chemie proved to be non-enemy, upon condition that the corporation present to the court within a stated time a plan consonant with the purposes of the Act, for limiting the benefits of the recovery to the non-enemy interests in the corporation. We suspect that the ingenuity of the corporation would not be taxed in devising such a plan if the only alternative to the return of assets in excess of $50,000,000 were no return at all. A satisfactory plan might involve the creation of a preferred stock

or debentures issuable to the non-enemy stockholders to the extent of their interest in the recovered assets; or it might take the form of a liquidating dividend. If the corporation refused to submit such a plan, the shareholders could do so, or the court might then order distribution directly to the non-enemy shareholders. Surely the Government should be the first to favor a plan which would prevent the enemy from profiting by this litigation or any settlement thereof.

Another technical objection suggested is that the corporation might be placed under the burden of proving the enemy or non-enemy character of its shareholders. It appears to us that under the *Uebersee* case it has this burden in any event. For that matter, the burden would be no greater after intervention or under any other theory which might require separate 9(a) proceedings in every federal district court. Rather, much time, effort and expense would be saved by intervention. From the standpoint of the convenience of the parties and of the court, it is highly desirable to have all the proof of that nature adduced in one action rather than in a multitude of actions in different jurisdictions.

Any determination that the shareholders are the only claimants and that they are required to proceed, by separate individual judicial proceedings may have, in addition to the objections already stated, important and serious consequences. The Government, and perhaps the corporation in question, would be involved in as many separate litigations as there are eligible stockholders. A small shareholder, especially if he is a non-resident, would for very practical and economic reasons be deprived of any remedy.

But even more important in this case, substantially none of the other non-enemy stockholders of I. G. Chemie have taken any administrative steps to file claims as individual stockholders with the Office of Alien Property. They did not bring any separate Section 9(a) actions. Prior to the decision in the *Uebersee* case there was nothing in the case or in any order, notification or regulation which put them on notice to do so. After the *Uebersee* case, when the neutral corporation, I. G. Chemie, brought this action for return of all the assets, and there as well as beforehand proclaimed its non-enemy character, the non-enemy stockholders had reason to believe that the corporation would do whatever might be necessary to protect their interests.

If this Court should now determine that the claim to a partial return exists, but must be established in separate independent actions by each of the individual stockholders, such a determination might for all practical purposes be the equivalent of a determination that the claim does not exist. This is why the Government now urges so vigorously that the claim belongs only to the individual stockholders and must be asserted in independent separate actions. They argue that, because none of the stockholders except your petitioners either filed an administrative claim or initiated a separate Section 9(a) action, they are now barred by the statute of limitations set forth in Section 33 of the Act.

There can be no question that, if the corporation is the proper claimant, no issue as to limitations arises in this case. The corporation as an entity has protected all rights in the vested property in a timely

fashion in so far as the statute of limitations is concerned.

We believe that both respondents, the Government and the management of the plaintiff corporation, have a fiduciary relationship to the non-enemy stockholders of I. G. Chemie under the terms of the Act and of established principles of equity, and by their conduct are estopped to deny that the corporation is the proper claimant. *Cf. Branch Banking & Trust Co.* v. *United States*, 98 F. Supp. 757 (Ct. Cl. 1951).

In the particular circumstances of this case, we believe any other result would be abhorrent to a court of equity because the course of conduct recited above (pp. 7-8), was designed to prevent the non-enemy stockholders from protecting themselves heretofore in any other fashion. *Southern Pacific Co.* v. *Bogert*; *Taylor* v. *Standard Gas & Electric Co.*; *Pepper* v. *Litton*, all cited, *supra*, p. 42.

In *Pepper* v. *Litton* this Court affirmed the position of equity in relation to such activity (308 U. S. at p. 311):

> "He who is in such a fiduciary position cannot serve himself first and his *cestuis* second. He cannot manipulate the affairs of his corporation to their detriment and in disregard of the standards of common decency and honesty. He cannot by the intervention of a corporate entity violate the ancient precept against serving two masters. He cannot by the use of the corporate device avail himself of privileges normally permitted outsiders in a race of creditors. He cannot utilize his inside information and his strategic position

for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do directly. He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference, or advantage of the fiduciary to the exclusion or detriment of the *cestuis*. Where there is a violation of those principles, equity will undo the wrong or intervene to prevent its consummation."

Accordingly, based upon the provisions and purposes of the Act, the Custodian's rulings, his practice and rationale in effecting settlements with corporate claimants, the convenience of the court and of the parties, and, finally and most important, the equitable considerations involved, the corporate entity is the proper party to assert the claim for the fractional return of vested assets to the extent of non-enemy ownership.

However, in considering whether intervention is essential to prevent an improper and illegal settlement, it is unnecessary to determine whether the corporation or the individual shareholder is the proper claimant. It will be remembered that a principal issue in this litigation, which is raised by the Government's answer, is whether I. G. Farben has any substantial stock interest held by or through the corporate officers and certain shareholders identified with them. If the Government desires to

compromise this issue with them, the non-enemy shareholders might not have the standing to object, if it were not to be at their expense. But the proposed settlement *would* inevitably be at their expense for two reasons—first, the proposed settlement, as we have alleged, and it has nowhere been contradicted, is for an amount far less than their *pro rata* interest in the vested assets (*supra,* p. 10); the second has already been stated to this Court by the Government when it pointed out that any return to the corporation (and this is equally applicable to return or payment in settlement) would defeat the purposes of the Act, because the recovery would inure to the benefit *pro rata* of all of its shareholders, enemy and non-enemy alike (*supra,* pp. 41-42).

Obviously the management has its personal reasons to cooperate with the Government in effecting such a settlement. It therefore refuses to litigate, and by every means seeks to prevent petitioners in their efforts to raise, the issue of the right of partial return to the extent of the non-enemy interest. Such a settlement would defeat the intent of the Congress as expressed in the Act and as reaffirmed in the War Claims Act. It is essential that a voice which is free to urge these considerations be heard in the litigation or in its settlement, without regard to whether the corporation or the shareholders is the proper claimant. That voice is thus far absent.

III.

The Right to Partial Return in This Case Can Be Asserted Only by Intervention.

If the claim exists for the partial return of the vested property, as we believe it does, and if the corporation is the proper claimant, as we believe it is, there is no way of asserting that claim in the present proceeding except by the intervention of your petitioners in the corporation's behalf.

We have alleged in our proposed complaint, and the corporate respondent has nowhere denied, that there are German shareholders of I. G. Chemie; that the management of I. G. Chemie, which itself holds a substantial stock interest in the company with voting control and which is itself charged with "enemy taint" in the principal action, has refused and continues to refuse to assert the claim because it has a personal and financial self-interest in precluding any adjudication of the issue. Clearly then, such a management will not and cannot properly discharge its fiduciary obligations to the corporation and to its non-enemy stockholders, *vis-á-vis* the Trading With the Enemy Act. In such circumstances, the case is in a posture which requires the intervention of stockholders on behalf of the corporation under Rule 24(a)(2), F. R. C. P., which in effect provides for intervention as a matter of right by an applicant when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action. *Missouri-Kansas Pipe Line Co.* v. *U. S.*, 312 U. S. 502 (1941);

Pyle-National Co. v. *Amos*, 172 F. 2d 425 (C. A. 7, 1949); *Park & Tilford, Inc.* v. *Schulte*, 160 F. 2d 984 (C. C. A. 2, 1947); *cf.* Note, *Shareholder Intervention in Corporate Litigation*, 63 Harvard L. Rev. 1426, 1429 (1950).

If, on the other hand, it should ultimately be held that the proper claimants for the fractional return of the vested assets are the non-enemy stockholders as a class, intervention is equally essential to protect the assertion of the claim, because such a determination is in effect a decision that the non-enemy stockholders under the Act have a direct interest in the vested assets which would be adversely affected by any disposition of the funds made by the court in the principal action. The right to intervene on such a basis is specifically provided for by Rule 24(a)(3), F. R. C. P.

But there is in this case another urgent reason for intervention by and on behalf of the non-enemy stockholders: to protect the interests of the non-enemy stockholders against settlement of the litigation, which respondents are now endeavoring to consummate.

The Government proposes to return to the corporation an amount far less than the value of the non-enemy interests in the vested assets and yet to permit enemy participation in the recovery. Thus the injury to the non-enemy interests is compounded. Having received less than their due under the settlement, the non-enemy interests are compelled to share the inadequate recovery with the enemy shareholders. In this way the recovery ultimately reaching the non-enemy

interests directly or indirectly is further diluted while at the same time a class of interests specifically declared to be ineligible for any recovery under the Enemy Act is unjustly enriched.

Such a settlement is improvident, and is illegal under the terms of the Act. The Government apparently agrees with our premises, but says, that once the Department of Justice is in litigation the Department has the unlimited power to settle any litigation, in effect without regard to the purposes and intent of the Act. We believe this position is wrong, particularly where the interests most directly and adversely affected by the settlement are not parties to it. We believe further that this Court has already enunciated this principle in the *Missouri-Kansas Pipe Line* case (*supra*, p. 48), where the Government had taken a similar position:

> "But where the enforcement of a public law also demands distinct safeguarding of private interests by giving them a formal status in the decree, the power to enforce rights thus sanctioned is not left to the public authorities nor put in the keeping of the district court's discretion."

In our view, under the provisions of Rule 24(a)(2) and (3) and the doctrine announced by this Court in the *Missouri-Kansas Pipe Line* case, your petitioners on behalf of all the non-enemy stockholders of I. G. Chemie similarly situated have the right to intervene.

CONCLUSION.

The Judgment of the Court Below Should Be Reversed.

Respectfully submitted,

WILLIAM RADNER,
IRVING MOSKOVITZ,
HENRY G. FISCHER,
SEYMOUR GRAUBARD,
ODELL KOMINERS,
Attorneys for Petitioners.

PETER N. SCHILLER,
BERYL HAROLD LEVY,
Of Counsel.

APPENDIX A.

Trading With the Enemy Act, as Amended.

SEC. 2. That the word "enemy;" as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any politi-

cal or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

SEC. 5. (b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath,

in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be

fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

SEC. 6. That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed $5,000 per annum) of an official to be known as the Alien Property Custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act. The alien property custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: *Provided,* That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law: *Provided further,* That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof.

SEC. 7. (c) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, or on account of, or on behalf of, or for the benefit of, an enemy

or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded.

Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require.

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom

and held by the Alien Property Custodian or by the Treasurer of the United States.

SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then

such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

Executive Order No. 8785 of June 14, 1941.

SEC. 5. E. The term "national" shall include,

. . . . . .

(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, and

---

Executive Order No. 9095 of March 11, 1942,

SEC. 10. For the purpose of this Executive Order:

(a) The term "designated enemy country" shall mean any foreign country against which the United States has declared the existence of a state of war (Germany, Italy, Japan, Bulgaria, Hungary, and Rumania) and any other country with which the United States is at war in the future. The term "national" shall have the meaning prescribed in section 5 of Executive Order No. 8389, as amended: *Provided, however,* That persons not within designated enemy countries (even though they may be within enemy-occupied countries or areas) shall not be deemed to be nationals of a designated enemy country unless the Alien Property Custodian determines: (i) that such person is controlled by or acting for or on behalf of (including cloaks for) a designated enemy country or a person within such country; or (ii) that such person is a citizen or subject of a designated enemy country and within an

enemy-occupied country or area; or (iii) that the national interest of the United States requires that such person be treated as a national of a designated enemy country. For the purpose of this Executive Order any determination by the Alien Property Custodian that any property or interest of any foreign country or national thereof is the property or interest of a designated enemy country or national thereof shall be final and conclusive as to the power of the Alien Property Custodian to exercise any of the power or authority conferred upon me by section 5 (b) of the Trading with the enemy Act, as amended.

S. 3901, 81st Congress, 2d Session.

IN THE HOUSE OF REPRESENTATIVES

July 27, 1950

Referred to the Committee on Interstate and Foreign Commerce

AN ACT

Amending section 34 of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 34 of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, is hereby further amended by adding at the end thereof the following subsection:

"(j) If the property or interest vested in or transferred to the Alien Property Custodian was owned, either directly or beneficially, immediately prior to such vesting or transfer, by an ineligible corporation, or other business association, then after final disposition of the debt claims described in subsection (g) hereof the Custodian shall pay out of the remaining balance, if any, of the money from which in accordance with subsection (d) hereof payment of debt claims may be made, claims based on ownership by eligible owners of less than all of the common or preferred stock of

such ineligible corporation or of less than the entire proprietary and beneficial interest in such ineligible association. For the purpose of this section a claim based on such ownership shall be treated as a debt claim, except that the time for filing such claim shall expire two years from the date of the last vesting in or transfer to the Custodian of any property or interest of an ineligible corporation or association in which there is such ownership, or from the date of the enactment of this subsection, whichever is later.

"Such remaining balance shall be equitably applied by the Custodian to such claims of eligible owners taking into consideration the nature, preferred or common, of the claim of each such owner. The amounts payable on such claims shall be based on the proportionate stock or proprietary and beneficial interest of each eligible owner and in the case of an eligible owner of common or capital stock or an interest in the nature thereof shall equal that proportion of the vested assets remaining after taking into account claims otherwise payable under this Act (including claims of creditors otherwise payable under this section and claims of a preferred nature of eligible owners payable under this subsection) which corresponds to such owners' proportionate common or capital stock interest or proprietary and beneficial interest in the nature thereof in such corporation or association: *Provided, however,* That this subsection shall not be deemed to require payment of any claim otherwise payable pursuant to any international agreement.

"For the purpose of this subsection 'ineligible corporation or association' means a corporation or association which is determined to be ineligible for return of vested property pursuant to section 32 of this Act, and 'eligible owner' means the owner of any part of the stock of an ineligible corporation or of any part of the proprietary and beneficial interest in an ineligible association, or the legal representative or successor in interest by inheritance, devise, bequest, or operation of law of such owner, if such ownership of such stock or proprietary and beneficial interest existed immediately prior to vesting in or transfer to the Alien Property Custodian and continuously thereafter to the date of payment pursuant to this subsection (without regard to purported divestments or limitations of such ownership by the Government of Germany, Japan, Bulgaria, Hungary, or Rumania), and if such owner and his legal representative or successor in interest, if any, are persons,

corporations, or associations determined to be eligible for return of vested property under section 32 of this Act."

Passed the Senate July 26 (legislative day, July 20), 1950.

Attest: LESLIE L. BIFFLE,
Secretary.

Senate Report No. 2051, 81st Congress, 2d Session.

AMENDING SECTION 34 OF THE TRADING WITH THE ENEMY ACT

July 17 (legislative day, July 1), 1950—Ordered to be printed

Mr. MCCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 3901]

The Committee on the Judiciary, to whom was referred the bill (S. 3901) amending section 34 of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, having considered the same, report favorably thereon, without amendment, and recommend that the bill do pass.

STATEMENT

The purpose of the proposed legislation is to correct an inequity now present in existing law. In view of the President's remarks in his veto message on H. R. 8422 (H. Doc. No. 628), it is the opinion of the committee that the present measure will bear the favorable endorsement of the Department of Justice (Alien Property Custodian) and the President. H. R. 8422 was a private bill designed to correct an injustice to a single individual, which injustice was the result of the inequity in existing law referred to above and explained in the following paragraphs. The President in his veto message, which readily admitted that the inequity existed, nevertheless stated (and in fact specifically asked) that the matter should be attended to by general legislation affording relief to all those similarly situated.

The proposed bill has been carefully drafted to meet the requirements as asked by the Executive.

Under existing law, there is a statutory prohibition against the return of property to persons who, even though they qualify as individuals, are ineligible because their ownership of the vested property was through the medium of a corporation. Thus, for instance, an enemy alien whose property has been vested directly by the Alien Property Custodian can secure return of such property upon qualifying under the law as a persecutee. However, the same person is barred from recovery by law if such vested property happens to consist of a minority interest in a vested corporation. The inequity, in the form of an unwarranted discrimination, is obvious.

Attached hereto and made a part thereof is the veto message of the President, wherein this general legislation is advised and requested.

To the House of Representatives:

I return herewith, without my approval, the enrolled bill (H. R. 8422) for the relief of Carmencita von Plettenberg.

The bill directs the transfer to Countess Carmencita von Plettenberg of 30.77 percent of the property vested by Vesting Order 10744 as the property of Casa Konke S. A. and La Talleres Tipo-Litograficos Ariston (Imprenta Ariston), business enterprises organized under the laws of Honduras.

It appears that Countess Carmencita von Plettenberg acquired an interest in these Honduran enterprises by inheritance from her father, a German citizen. The remaining interest in the enterprises was held by German citizens resident in Germany. Although Countess von Plettenberg was a German citizen, resident in Germany during the war, she would be eligible under section 32 (a) of the Trading With the Enemy Act for return of any property formerly owned by her if she were shown to be a victim of religious or political persecution. But, while it appears that she was a victim of persecution by the Nazis, the property which she claims was owned by corporations in which she was a minority shareholder. Her minority share of the vested assets of the corporations in question cannot be returned under the law as it now exists because more than 50 percent of the stock was owned by persons who are ineligible under the statute for the return of the vested property.

It is recognized that injustices may result from the statutory prohibition against return of property to persons who, even though they qualify as individuals, are ineligible because their ownership of the vested property was through the medium of a corporation. This provision of law has required the Office of Alien Property to deny the return of property in other cases just as deserving as the one here in question. The special consideration this bill would grant to this particular claimant would be unfair to the other claimants in equally appealing circumstances.

The problem presented by this case and other similar cases should be considered in connection with general legislation amending the Trading With the Enemy Act to permit returns of property to persons who would be eligible claimants if they had owned the property directly rather than through a corporate equity. I hope that the Congress, with the assistance of the executive agencies concerned, will develop and enact appropriate legislation at an early date.

While the particular facts in this case warrant sympathetic consideration, I am constrained, for the foregoing reasons, to withhold my approval from the bill.

HARRY S. TRUMAN.

The White House, June 23, 1950.

H. R. 8422

EIGHTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA, AT THE SECOND SESSION, BEGUN AND HELD AT THE CITY OF WASHINGTON ON TUESDAY, THE THIRD DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND FIFTY

AN ACT For the relief of Carmencita von Plettenberg.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President, or the officer or agency designated by him, pursuant to the provisions of section 32 of the Trading With the Enemy Act (U. S. C., title 50, App., sec. 32), shall transfer and deliver 30.77 per centum of the property hereinafter described to Carmencita von Plettenberg (also

known as Minita von Plettenberg) or her successors in interest. The property heretofore referred to is all of the property and interests vested in or transferred to the Attorney General as the property of Casa Konke S. A., a corporation, and as the property of La Talleres Tipo-Litograficos Ariston (Imprenta Ariston), remaining after the deduction of the amount expended or incurred by the United States, prior to the transfers provided by this Act, for the conservation, preservation, or maintenance of such property and interests and for the payment of debts lawfully payable out of such property and interests. The term "successor in interest" shall mean the legal representative (whether or not appointed by a court in the United States), or a person succeeding by inheritance, devise, bequest, or operation of law, to any part of the stock or other beneficial ownership by Carmencita von Plettenberg of the corporation, property, and interests referred to above.

SEC. 2. The property and interests to be transferred as provided by this Act shall be subject to attachment, in accordance with the provisions of section 32 (f) of the Trading With the Enemy Act, in the same manner as property of (1) the person to whom return is to be made and (2) the person who owned such property or interests immediately prior to its vesting or transfer to the Alien Property Custodian; but not more than 30.77 per centum of any obligation of such owner prior to vesting shall be satisfied out of such property and interests. Upon delivery of property to a transferee under this Act, such transferee shall succeed to 30.77 per centum of each obligation lawfully assertible by a person not ineligible to receive a return under section 32 of the Trading With the Enemy Act against the corporation, property, or interests referred to above, except that such transferee shall not succeed to obligations exceeding in aggregate amount the value of the property and interests transferred to such transferee under the provisions of this Act.

SEC. 3. Not more than 10 per centum in value of the proceeds of the transfers provided for by this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with the transfers provided for by this Act, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this section shall be

deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

SAM RAYBURN,
Speaker of the House of Representatives.

ALBEN W. BARKLEY,
Vice President of the United States and President of the Senate.

[Endorsement on back of bill.]

I certify that this Act originated in the House of Representatives.

RALPH R. ROBERTS, *Clerk.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows:

[The text of Section 34 follows.]